In the High Court of Judicature at Madras

Dated : 12.9.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1247 of 2007

The Commissioner of Income-Tax
Tamil Nadu – I ,Madras .. Appellant

Vs

M/s. Lanxess India Pvt. Ltd.,
(Successors of Bayer Indian Syntans Ltd.,)
No.749, Anna Salai, Chennai 2. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 16.2.2007 made in I.T.A.No.1226/Mds/2005 for the assessment year 1998-99. (ITA.TR.No.21/04-05 dated 18.02.2005 on the file of the Commissioner of Income Tax (Appeals) VII, Chennai - 34 against PA/GIR.No.BX2-019/AAACB3581G dated 22.03.2001 on the file of the Assistant Commissioner of Income Tax, Company Circle I(2) Chennai.)

For Appellant : Mr.J.Nareshkumar
Standing Counsel for Income Tax

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'B' Bench made in I.T.A.No.1226/Mds/2005 dated 16.02.2007 The relevant the assessment year is 1998-99.

2. The assessee is a manufacture of leather chemicals. The original assessment was completed under Section 143(3) on 30.3.2001 determining loss at Rs.2,45,19,970/- as against the returned loss of Rs.2,60,85,146/-. On the basis of the information received by the assessing officer claim for commission/discount paid to M/s.Amranj Chemical Agencies by the assessee was examined and the assessing officer after considering the materials available on record disallowed the claim for the commission payment of Rs.1,69,39,827/-. Against that order the

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assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax Appeals held that 20% of the total disallowance of commission of Rs.1,69,39,827/- should be disallowed as unreasonable and excessive. Thus, he directed the assessing officer to modify the assessment accordingly. Against that order, the revenue preferred an appeal before the Income Tax Appellate Tribunal, which held that the disallowance of 30% is to be considered as genuine and reasonable. Aggrieved by the order of the Tribunal, the present appeal is filed by formulating the following substantial question of law.

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that, the disallowance to the extent of 30% is to be considered as genuine and reasonable even though the assessee could not produce sufficient evidence for the claim of commission payment of Rs.1,69,39,827/- is valid. ?

3. We heard the arguments of the learned counsel for the Revenue and perused the orders of the authorities below.

4. The Commissioner of Income Tax (Appeals) recorded a finding that the basis for reassessment in the case of the respondent assessee was the findings in the case of the agent company, where out of commission payment of Rs.1.69 crores, Rs.1.15 crores was disallowed by the assessing officer for the reason that the expenses were not genuine. Subsequently, the said finding of the assessing officer was reversed by the appellate authority by giving the reason that the assessing officer has opined that only the state of affairs indicated defects in the books of account and not that the expenses were not genuine. On the basis of further remand report from the assessing officer, the Commissioner of Income Tax (Appeals) has determined the profit at an estimated figure of 22% and by implication has substantially allowed the commission expenses. That order has become final. On the basis of the assessment made in respect of the agent company, the Commissioner of Income Tax (Appeals) in the case of the respondent assessee has held that 20% of the total disallowance of commission of Rs.1,69,39,827/- should be disallowed as unreasonable and excessive. The Tribunal on appeal at the instance of the Revenue has recorded a finding to the effect that the Revenue has assessed the commission in the hands of the agent company as is evident from the assessment order. The Commissioner of Income Tax (Appeals) had gone through the remand report of the assessing officer and the assessing officer has stated that the state of affairs of the assessee company indicates deficiencies in the books of accounts and the expenses were not genuine. The Tribunal has further found that the estimate made by the Commissioner of Income Tax (Appeals) is unreasonable because of the reason that in respect of the agent company, the Commissioner of Income Tax (Appeals) has given a categorical finding that the income was ranging from 25 to 30%, which has become final. From the finding

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recorded, which has become final in respect of agent company, the same relief has been granted at the hands of the assessee company. From the above finding recorded by the Tribunal, which are factual in nature, we are of the view that there is no question of law muchless substantial question of law involved in the appeal so as to entertain the same. The tax case appeal is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

krr/

To

1.The Assistant Registrar,
Income-Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Madras 90.

2. The Commissioner of Income Tax,
Tamil Nadu I, Madras.

3. The Commissioner of Income Tax (Appeals) VII,
Chennai - 34.

4. The Assistant Commissioner of Income Tax,
Company Circle 1 (2), Chennai 34.

1 cc To Mr.Pushya Sitaraman, Standing Counsel for I.T.Cases, SR.56916.

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JRG(CO)
RVL 22.10.2007

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